| GUJARAT AUTHORITY FOR ADVANCE RULING,<br>GOODS AND SERVICES TAX,<br>D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,<br>AHMEDABAD – 380 009. |  |
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**ADVANCE RULING NO. GUJ/GAAR/R/39/2021**

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/24)

**Date: 30-07-2021**

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| Name and address of the applicant | : | M/s Tata Motors Ltd.,<br>Plot No. A-1, Tata Motors, Village North Kotpura, Sanand, Ahmedabad<br>382170 (Gujarat). |
| GSTIN of the applicant | : | 24AAACT2727Q1Z2 |
| Date of application | : | 1-7-21 |
| Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised. | : | *(d) & (e)* |
| Date of Personal Hearing | : | 27-7-21 (through Video Conferencing) |
| Present for the applicant | : | Shri Rajesh Shukla, Head Indirect Taxation, Shri Mukesh Dokania, DGM |

***B R I E F  FA C T S***

The applicant submitted that they are maintaining canteen facility to its employees at its factory premises to comply with the mandatory requirement of maintaining the canteen as per the Factories Act, 1948. The applicant submits that as per the proviso to Section 17(5) (b) of Central Goods & Service Tax Act, 2017, ITC of GST paid on goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

2. The Applicant is recovering nominal amount on monthly basis to ensure use of canteen facility only by authorized persons/employees and expenditure incurred towards canteen facility borne by Applicant is part and parcel of cost to company. In press release dated 10.07.2017 also, it was clarified that, supply by employer to employee in terms of contractual agreement of employment (part of salary/CTC) is not subject to GST. Once employee ceases to be in employment with Applicant, he/she is not authorized to use the canteen facility. In other words, employer-employee relationship is must to avail this facility.

3. Applicant has submitted that they are not in the business of providing canteen service and hence recovery of nominal amount will not fall in definition of supply at all. Similar view is also upheld by Maharashtra AAR in the case of Jotun India (P) Ltd-2019-TIOL-312-AAR-GST.

4. The applicant submitted that they deducted nominal amount from employee's salary for availing canteen facility. In other words, difference between amount paid to service provider and amount recovered from employees is cost to company as salary cost.

***Question on which Advance Ruling sought***

*1. Whether input tax credit (ITC) available to Applicant on GST charged by service provider on canteen facility provided to employees working in factory?*

*2. Whether GST is applicable on nominal amount recovered by Applicants from employees for usage of canteen facility?*

*3. If ITC is available as per question no. (1) above, whether it will be restricted to the extent of cost borne by the Applicant (employer)?*

***Personal Hearing:***

6. Shri Rajesh Shukla, Head Indirect Taxation, Shri Mukesh Dokania, DGM appeared for the hearing (through virtual mode) and reiterated the contents of the application. The applicant submitted as follows : As per company policy, applicant provide the food facility to their employees and recovered nominal amount from the employee and the said recovered amount is paid to canteen contractor and remaining amount is paid by the company to the contractor.

***FINDINGS:***

7. We have carefully considered all the submissions made by the applicant. We find that the applicant has arranged a canteen for its employees, which is run by a third party Canteen Service Provider. As per their arrangement, part of the Canteen charges is borne by the applicant whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by the applicant and paid to the Canteen Service Provider. The applicant submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. This activity carried out by applicant is without consideration.

8. We now detail our findings on admissibility of GST paid on canteen charges.

Section 17(5)( b) of CGST Act, 2017 reads as follows:-

***Section 17(5)(b)***

*"(b) the following supply of goods or services or both-*

*(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance**:***

*Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply**;***

*(ii) membership of a club, health and fitness centre**; and***

*(iii) travel benefits extended to employees on vacation such as leave or home travel concession**:***

*Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."*

8.1 We note that sub clause of Section 17(5)(b)(i) ends with **colon : and is followed by a proviso and this proviso ends with a semicolon.**

8.2 Colons and semicolons are two types of punctuation. Colons are used in sentences to show that something is following, like a quotation, example, or list. Semicolons are used to join two independent clauses/ subclauses, or two complete thoughts that could

stand alone as complete sentences. That means they're to be used when you're dealing with two complete thoughts that could stand alone as a sentence.

8.3 We find that semicolon creates a wall for conveying mutual exclusivity between the sub-clauses, in present matter. It is obvious that the legislature intended the said sub-clauses to be distinct and separate alternatives, with distinctively different qualifying factors and conditionalities

8.3 Thus, we hold that Section 17(5)(b)(i) sub-clause ending with a colon and followed by a provisio which ends with a semi colon is to be read as independent sub-clause, independent of sub clause Section 17(5)(b)(iii) and its proviso [of subclause iii]. Thereby, the provisio to section 17(5)(b)(iii) is not connected to the sub-clause of Section 17(5)(b)(i) and cannot be read into it.

**Judicial Discipline**

8.4.

i. We find our view is in compliance to judicial discipline as laid down by the H'ble Supreme Court and H'ble High Courts. **The relevant extract of H'ble Supreme Court's judgment in the case of PIL of *Shri Jayant Verma* v. *Union of India*, dated 16-2-2018 related to the expressions separated by semicolon is as follows:** *"Firstly, purely grammatically, a semicolon separates the two expressions showing that they are not inextricably connected. ……. Entry 5, List III deals with seven completely different subjects, all banded together under Entry 5 and separated by semicolons, making it clear that each subject matter is separate and distinct from what follows each semicolon.……."*

ii. The relevant portion of judgment of **H'ble High Court of Kerala in case of *Mr. Vincent Mathew* v. *LIC of India* dated 15-1-2013** is as follows:*"….. But, what is more relevant and crucial for the purpose of deciding the issue is that each of the earlier clauses viz., (a) to (bbb) ends up with semicolon. It is to be noted that semicolon (;) is a punctuation mark indicating a greater degree of separation than the 'comma' and it is being used to separate parts of a sentences...."*

iii. Further, to quote one more case law in consonance with our view is H'ble Tribunal order in the case of M/s DCW LIMITED (2001 (130) E.L.T. 891 (Tri. - Mumbai)) which detailed its finding on semicolon in its para 6.

iv. Our view is in compliance with **Hon'ble Patna High Court in the case of Shapoorji Paloonji & Company Ltd. Vs CCE, Patna reported in 2016 (42) STR 681 (Pat.)**. The Hon'ble Patna High Court in the said case had occasion to decide whether the condition attached to definition of Governmental Authority viz. participation of government by way of 90% or more of equity and control to carry out the functions of municipality under article 243W of the Constitution, is relevant for both the clauses separated by semi colon or not. *In this decision, the High Court is of the opinion that the clause (i) is followed by ";" and the word "or". Therefore, each of the sub-clauses is independent provision and condition of 90% participation would not be applicable to clause (i).*

8.5 We notice that case law: CCE, Nagpur vs Ultratech Cements Ltd as reported in 2010 (260) ELT 369 (Bom) was cited by applicant wherein credit was held not admissible to manufacturer on part of cost borne by worker. The case law pertains to Service Tax era. We now are dealing with GST matter and are to pronounce Ruling within the confines of CGST Act. The cited case law therefore does not apply to the present matter. Also, the ITC on GST paid on canteen facility itself being inadmissible, said case law, therefore does not cover the matter at hand.

8.6 We pronounce the Ruling:

***RULING***

1. ITC on GST paid on canteen facility is **blocked credit** under Section 17 (5)(b)(i) of CGST Act and inadmissible to applicant.

2. GST, at the hands on the applicant, is **not** leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant and paid to the Canteen service provider.

(**SANJAY SAXENA**)
**MEMBER (S)**

(**ARUN RICHARD**)
**MEMBER (C)**